



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2011-0888; EPA-R05-OAR-2011-0969;**

**EPA-R05-OAR-2012-0991; EPA-R05-OAR-2013-0435; FRL-9923-48-Region 5]**

**Approval and Promulgation of Air Quality Implementation Plans;**

**Ohio; PSD Infrastructure SIP Requirements for the 2008 Lead,**

**2008 Ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving elements of state implementation plan (SIP) submissions from Ohio regarding the Prevention of Significant Deterioration (PSD) infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO<sub>2</sub>), and 2010 sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

**DATES:** This direct final rule will be effective **[insert date 60 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[insert date 30 days after date of publication in the Federal Register]**. If adverse comments

are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2011-0888 (2008 Pb infrastructure elements), EPA-R05-OAR-2011-0969 (2008 ozone infrastructure elements), EPA-R05-OAR-2012-0991 (2010 NO<sub>2</sub> infrastructure elements), or EPA-R05-OAR-2013-0435 (2010 SO<sub>2</sub> infrastructure elements) by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

2. E-mail: [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).

3. Fax: (312) 408-2279.

4. Mail: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. Hand Delivery: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed

information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID. EPA-R05-OAR-2011-0888 (2008 Pb infrastructure elements), EPA-R05-OAR-2011-0969 (2008 ozone infrastructure elements), EPA-R05-OAR-2012-0991 (2010 NO<sub>2</sub> infrastructure elements), or EPA-R05-OAR-2013-0435 (2010 SO<sub>2</sub> infrastructure elements). EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment,

EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886-9401 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air

Programs Branch (AR-18J), Environmental Protection Agency,  
Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604,  
(312) 886-9401, [arra.sarah@epa.gov](mailto:arra.sarah@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background of these SIP submissions?
- II. What is EPA's review of these SIP submissions?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews.

**I. What is the background of these SIP submissions?**

This rulemaking addresses submissions from the Ohio Environmental Protection Agency (Ohio EPA). The state submitted its infrastructure SIP for each NAAQS on the following dates:  
2008 Pb - October 12, 2011, and supplemented on June 7, 2013;  
2008 ozone - December 27, 2012, and supplemented on June 7, 2013;  
2010 NO<sub>2</sub> - February 8, 2013, and supplemented on February 25, 2013, and June 7, 2013; and, 2010 SO<sub>2</sub> - June 7, 2013.

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality

standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

This specific rule making is only taking action on the PSD elements of these submittals. The majority of the other infrastructure elements were addressed in proposed rulemaking published July 25, 2014 (79 FR 43338). Final action was taken on those elements on October 6, 2014, for 2008 Pb and 2010 NO<sub>2</sub> (79 FR 60075)<sup>1</sup>, and on October 16, 2014, for 2008 ozone (79 FR 62019)<sup>2</sup>. The infrastructure elements for PSD are found in CAA 110(a)(2)(C), 110(a)(2)(D), and 110(a)(2)(J) and will be discussed in detail below. For further discussion on the background of infrastructure submittals, see 79 FR 43338.

## **II. What is EPA's review of these SIP submissions?**

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1 Specifically, sections 110(a)(2)(A) through (H), and (J) through (M) for the 2008 lead and 2010 NO<sub>2</sub> NAAQS except the prevention of significant deterioration requirements in sections 110(a)(2)(C), (D)(i)(II), and (J), the visibility portion of (J).

2 Specifically, sections 110(a)(2)(A) through (H), and (J) through (M) for the 2008 ozone NAAQS except the prevention of significant deterioration requirements in sections 110(a)(2)(C), (D)(i)(II), and (J), the visibility portion of (J) and the interstate transport portion of 110(a)(2)(D)(i).

**A. Section 110(a)(2)(C) - Program for enforcement of control measures; PSD.**

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160 - 169B) addresses PSD, while part D of the CAA (sections 171 - 193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers: (i) enforcement of SIP measures; (ii) PSD provisions that explicitly identify oxides of nitrogen (NO<sub>x</sub>) as a precursor to ozone in the PSD program; (iii) identification of precursors to fine particulates (PM<sub>2.5</sub>) and the identification of PM<sub>2.5</sub> and PM<sub>10</sub><sup>3</sup> condensables in the PSD program; (iv) PM<sub>2.5</sub> increments in the PSD program; and, (v) GHG permitting and the "Tailoring Rule."<sup>4</sup>

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<sup>3</sup> PM<sub>10</sub> refers to particles with diameters between 2.5 and 10 microns, oftentimes referred to as "coarse" particles.

<sup>4</sup> In EPA's April 28, 2011, proposed rulemaking for infrastructure SIPs for the 1997 ozone and PM<sub>2.5</sub> NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (see 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012, proposed rulemaking for infrastructure SIPs for the 2006 PM<sub>2.5</sub> NAAQS (see 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO<sub>x</sub> as a precursor to ozone, PM<sub>2.5</sub> precursors, PM<sub>2.5</sub> and PM<sub>10</sub> condensables, PM<sub>2.5</sub> increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective

Sub-element 1: Enforcement of SIP measures

This element was proposed for the 2008 lead, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS in the July 25, 2014, rulemaking (79 FR 43338) and was finalized for the 2008 lead and 2010 NO<sub>2</sub> NAAQS in the October 6, 2014, rulemaking (79 FR 60075) and for the 2008 ozone NAAQS in the October 16, 2014, rulemaking (79 FR 62019). This element will be finalized for the 2010 SO<sub>2</sub> NAAQS in a separate rulemaking.

Sub-element 2: PSD provisions that explicitly identify NO<sub>x</sub> as a precursor to ozone in the PSD program

EPA's "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard - Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 29, 2005 (see 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO<sub>x</sub> as a precursor to ozone (70 FR 71612 at 71679, 71699-71700). This requirement was codified in 40 CFR 51.166.<sup>5</sup>

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of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2010 NO<sub>2</sub> NAAQS.

<sup>5</sup> Similar changes were codified in 40 CFR 52.21.



The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including the specification of NO<sub>x</sub> as a precursor to ozone provisions, by June 15, 2007 (70 FR 71612 at 71683).

EPA approved revisions to Ohio's PSD SIP reflecting these requirements on October 28, 2014 (79 FR 64119), and therefore, Ohio has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2008 lead, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

Sub-element 3: Identification of precursors to PM<sub>2.5</sub> and the identification of PM<sub>2.5</sub> and PM<sub>10</sub> condensables in the PSD program

On May 16, 2008 (see 73 FR 28321), EPA issued the Final Rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)" (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM<sub>2.5</sub> and other pollutants that contribute to secondary PM<sub>2.5</sub> formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM<sub>2.5</sub>, otherwise known as precursors. In the 2008 rule, EPA identified precursors to PM<sub>2.5</sub> for the PSD program to be sulfur dioxide (SO<sub>2</sub>) and NO<sub>x</sub> (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area

are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to PM<sub>2.5</sub> in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient PM<sub>2.5</sub> concentrations.

The explicit references to SO<sub>2</sub>, NO<sub>x</sub>, and VOCs as they pertain to secondary PM<sub>2.5</sub> formation are codified at 40 CFR 51.166(b)(49)(i)(b) and 40 CFR 52.21(b)(50)(i)(b). As part of identifying pollutants that are precursors to PM<sub>2.5</sub>, the 2008 NSR Rule also required states to revise the definition of "significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define "significant" for PM<sub>2.5</sub> to mean the following emissions rates: 10 tpy of direct PM<sub>2.5</sub>; 40 tpy of SO<sub>2</sub>; and 40 tpy of NO<sub>x</sub> (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (see 73 FR

28321 at 28341).<sup>6</sup>

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in PM<sub>2.5</sub> and PM<sub>10</sub> emission limits in NSR permits. Instead, EPA determined that states had to account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables for applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(a) and 40 CFR 52.21(b)(50)(i)(a). Revisions to states' PSD programs incorporating the inclusion of condensables were required be submitted to EPA by May 16, 2011 (see 73 FR

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6 EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM<sub>10</sub> nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council v. EPA*, No. 08-1250). As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for PM<sub>2.5</sub> attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, EPA's approval of Ohio's infrastructure SIP as to elements (C), (D)(i)(II), or (J) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion. The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

28321 at 28341).

EPA approved revisions to Ohio's PSD SIP reflecting these requirements on October 28, 2014 (79 FR 64119), and therefore Ohio has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2008 lead, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

Sub-element 4: PM<sub>2.5</sub> increments in the PSD program

On October 20, 2010, EPA issued the final rule on the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>) - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (2010 NSR Rule). This rule established several components for making PSD permitting determinations for PM<sub>2.5</sub>, including a system of "increments" which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in the table below.

**Table 1: PM<sub>2.5</sub> Increments Established by the 2010 NSR Rule in micrograms per cubic meter**

	Annual arithmetic mean	24-hour max
Class I	1	2
Class II	4	9
Class III	8	18

The 2010 NSR Rule also established a new "major source baseline date" for PM<sub>2.5</sub> as October 20, 2010, and a new trigger date for PM<sub>2.5</sub> as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(c) and (b)(14)(ii)(c), and 40 CFR 52.21(b)(14)(i)(c) and (b)(14)(ii)(c). Lastly, the 2010 NSR Rule revised the definition of "baseline area" to include a level of significance of 0.3 micrograms per cubic meter, annual average, for PM<sub>2.5</sub>. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

On October 28, 2014 (79 FR 64119), EPA finalized approval of the applicable infrastructure SIP PSD revisions for Ohio, therefore Ohio has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2008 lead, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

Sub-element 5: GHG permitting and the "Tailoring Rule"

With respect to Elements C, and J, EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Ohio has shown that it

currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427. The Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also found that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, EPA is no longer applying EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant: (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net

emissions increase from a modification (see 40 CFR 51.166(b)(48)(v)).

EPA anticipates a need to revise Federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States Court of Appeals for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, Ohio's SIP is sufficient to satisfy Elements C, D(i)(II), and J with respect to GHGs because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved Ohio PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme

Court decision, this does not render the infrastructure SIP submission inadequate to satisfy Elements C, (D)(i)(II), and J. The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision.

For the purposes of the 2008 lead, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS infrastructure SIPs, EPA reiterates that NSR reform regulations are not within the scope of these actions. Therefore, we are not taking action on existing NSR reform regulations for Ohio. EPA approved Ohio's minor NSR program on January 22, 2003 (68 FR 2909), and since that date, OEPA and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2008 lead, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

Certain sub-elements in this section overlap with elements of section 110(a)(2)(D)(i) and section 110(a)(2)(J). These links will be discussed in the appropriate areas below.

**B. Section 110(a)(2)(D) - Interstate transport.**

Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in



one state from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

EPA notes that Ohio's satisfaction of the applicable infrastructure SIP PSD requirements for the 2008 lead, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS has been detailed in the section addressing section 110(a)(2)(C). EPA notes that the actions in that section related to PSD are consistent with the actions related to PSD for section 110(a)(2)(D)(i)(II), and they are reiterated below.

EPA has previously approved revisions to Ohio's SIP that meet certain requirements obligated by the Phase 2 Rule and the 2008 NSR Rule. These revisions included provisions that:

- 1) explicitly identify NO<sub>x</sub> as a precursor to ozone, 2) explicitly identify SO<sub>2</sub> and NO<sub>x</sub> as precursors to PM<sub>2.5</sub>, and 3) regulate condensable PM<sub>2.5</sub> and PM<sub>10</sub> in applicability determinations and establishing emissions limits.

EPA has also previously approved revisions to Ohio's SIP that incorporate the PM<sub>2.5</sub> increments and the associated implementation regulations including the major source baseline date, trigger date, and level of significance for PM<sub>2.5</sub> per the 2010 NSR Rule. Ohio's SIP contains provisions that adequately address the 2008 lead, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**C. Section 110(a)(2)(J) - Consultation with government officials; public notifications; PSD; visibility protection.**

Sub-element 3: PSD.

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Ohio's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II), and EPA notes that the actions for those sections are consistent with the actions for this portion of section 110(a)(2)(J).

Therefore, Ohio has met all of the infrastructure SIP requirements for PSD associated with section 110(a)(2)(D)(J) for the 2008 lead, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**III. What action is EPA taking?**

EPA is approving the PSD related infrastructure requirements for Ohio's 2008 lead, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS submittals under sections 110(a)(1) and (2) of the CAA. EPA's actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) are contained in the table below.

Element	2008 Lead	2008 Ozone	2010 NO <sub>2</sub>	2010 SO <sub>2</sub>
(A): Emission limits and other control measures	a	a	a	p

(B): Ambient air quality monitoring and data system	a	a	a	p
(C)1: Enforcement of SIP measures	a	a	a	p
(C)2: PSD	A	A	A	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	a	NA	a	NA
(D)2: PSD	A	A	A	A
(D)3: Visibility Protection	a	NA	NA	NA
(D)4: Interstate Pollution Abatement	a	a	a	p
(D)5: International Pollution Abatement	a	a	a	p
(E): Adequate resources	a	a	a	p
(E): State boards	a	a	a	p
(F): Stationary source monitoring system	a	a	a	p
(G): Emergency power	a	a	a	p
(H): Future SIP revisions	a	a	a	p
(I): Nonattainment area plan or plan revisions under part D	+	+	+	+
(J)1: Consultation with government officials	a	a	a	p
(J)2: Public notification	a	a	a	p
(J)3: PSD	A	A	A	A
(J)4: Visibility protection	+	+	+	+
(K): Air quality modeling and data	a	a	a	p
(L): Permitting fees	a	a	a	p
(M): Consultation and participation by affected local entities	a	a	a	p

In the above table, the key is as follows:

A	Approved in today's action
a	Approved in a previous rulemaking
p	Proposed in a previous rulemaking
NA	No Action/ Separate Rulemaking
+	Not germane to infrastructure SIPs

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve

the state plan if relevant adverse written comments are filed. This rule will be effective **[insert date 60 days after date of publication in the Federal Register]** without further notice unless we receive relevant adverse written comments by **[insert date 30 days after date of publication in the Federal Register]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[insert date 60 days after date of publication in the Federal Register]**.

#### **IV. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to

approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a

comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 17, 2015.

Susan Hedman,  
Regional Administrator, Region 5.



40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Section 52.1891 is amended by revising paragraphs (e) through (g) and adding paragraph (h) to read as follows:

**§ 52.1891 Section 110(a)(2) infrastructure requirements.**

\* \* \* \* \*

(e) Approval— In a October 12, 2011, submittal, supplemented on June 7, 2013, Ohio certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2008 Lead NAAQS.

(f) Approval— In a February 8, 2013, submittal, supplemented on February 25, 2013, and June 7, 2013, Ohio certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2010 NO<sub>2</sub> NAAQS. We are not finalizing action on the visibility protection requirements of (D)(i)(II).

(g) Approval— In a December 27, 2012, submittal, supplemented on June 7, 2013, Ohio certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2008 Ozone NAAQS. We are not

finalizing action on section 110(a)(2)(D)(i)(I) - Interstate transport prongs 1 and 2 or visibility portions of section 110(a)(2)(D)(i)(II) and 110(a)(2)(J).

(h) Approval— In a June 7, 2013, submittal, Ohio certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2010 SO<sub>2</sub> NAAQS. We are only taking action on the PSD portions 110(a)(2)(C), (D)(i), and (J).

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